Enactment No. 4 of 1930, which came into force on the 1st April, 1930, should be applied in this case.

Sections 3 and 12 of the Kelantan Limitation Enactment read :—

"3 (i). Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted after the period of limitation prescribed therefor by the Schedule hereto shall be dismissed.

(ii). The provisions of sub-section (i) shall not apply to any such suit if the defendant in his written statement of defence or verbally at the hearing of the suit shall have notified the Court that he does not desire to avail himself of the defence of limitation."

"12. In computing any period of limitation prescribed by this Enactment the time during which the defendant shall have been absent out of Kelantan shall be excluded from such computation, except any time during which service of a summons to appear and answer in the suit can, during the absence of such defendant, be made in any mode prescribed by law."

Item 92 of the Schedule is as follows :—

"92. For specific performance of a contract	3 years	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."

The first question for decision is whether this Enactment can be applied to the present case the cause of action in which arose before 1930. It is clear from *Rustomji's Law of Limitation* (5th edition), at page 15, that :—

"A Statute of Limitation being a law of procedure is as a rule retrospective in its operation and governs all proceedings from the moment of its enactment."

In the case of *The Ydun*[1], the following passage appears in the judgment of Vaughan Williams, L.J. :—

"I also agree that the Act is retrospective, for though, no doubt, the general rule of construction is that "nova constitutio futuris formam imponere debet non praeteritis," it is pointed out in **Moon v. Durden** (2 Ex. 22) that that rule of construction yields to a sufficiently expressed intention of the Legislature that the enactment shall have a retrospective operation, and there is abundant authority that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts."

I am satisfied that the Limitation Enactment can and should be applied in this case.

The next question to consider is whether the period of limitation of three years has run against the respondents. The first plaintiff in his evidence says :—

"About 2 years after I bought the land Soh Kee Piaw went away and I do not know where he went. I have not seen him since."

The Moratorium Proclamation was repealed with effect from the 1st October, 1949. This suit was instituted on the 16th of October, 1951, more than two years after the repeal. It is certain, therefore, that the statutory period of limitation had expired before the suit was instituted.

I would, therefore, allow this appeal with costs. The amount deposited in Court by the appellant should be paid out to her.

Pretheroe, J. : —I have had the advantage of reading the judgment prepared by the learned President in this appeal. I agree with that judgment and have nothing to add thereto.

Briggs, J. : —I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and have nothing to add.

Appeal allowed.

CHEAH KENG KOOI v. A. W. L. FRUGTNIET.

[Orig. Civ. Juris. (Wilson, J.) May 5, 1952]

[K.L. — Originating Summons No. 72 of 1951]

Debtor and Creditor (Occupation Period) Ordinance, 1948 — Demand — Extended period as mutually agreed.

Defendant borrowed $10,000 from F.M.S. Benefit Society repayable on 12th December, 1941. By letter dated 13th July, 1943 he was requested to settle outstanding interest at his earliest convenience and submit proposals with regard to repayment of loan. He was unable to pay anything at the time and said so. The whole amount of the principal and interest due was repaid on the 22nd April, 1944.

Held, there was a demand for repayment of principal, and the repayment was made within an extended period as mutually agreed upon by the parties.

Cases referred to :—

(1) *Khoo Soo Jin & Anor. v. Lye Yew Song* (1951) M.L.J. 231.

(2) *Chua Yam Quee v. Peena Moona Mohamed Abdul Hameed & Anor.* (1950) M.L.J. 141.

ORIGINATING SUMMONS.

Tan Teow Bok for the plaintiff.

E. A. S. Wagner for the defendant.

Cur. Adv. Vult.

Wilson, J. : —The defendant borrowed $10,000 from the F.M.S. Benefit Society on a memorandum of charge on No. 227, Ampang Road, Kuala Lumpur. He promised to repay this sum on the 12th December, 1941 and of course undertook to pay interest until full settlement of the loan. He did not repay the principal on the due date and fell into arrears with the interest. On the 13th July, 1943 the Secretaries and Treasurers of the Society wrote to the defendant as follows :—

"With reference to the loan granted to you by the above Society, we give you below particulars of the principal and interest outstanding as at 30th June, 2603.

Balance of Principal	$10,000.00
Interest 1.11.41 to 30.6.43	833.33

"We would be glad if you would settle the outstanding interest at your earliest convenience. At the same time will you please submit your proposals (if any) with regard to repayment of your loan, for consideration of the Committee."

The defendant replied agreeing with the amount of principal and interest due and stating that he was at the time unable to pay anything towards the above loan but would do so as soon as circumstances permitted. The defendant in evidence stated that he regarded the letter of the 13th July as a demand for repayment of the principal. He eventually raised the necessary money and paid to the treasurers of the Society the full amount of the principal and interest then due on the 22nd April, 1944.

The plaintiff, as trustee of the Society, now claims reinstatement of the charge and revaluation of the payment made in respect of this preoccupation debt during the occupation.

The first question is whether there was any demand by the Society or their agent to the defendant of the principal sum due on the charge and it is urged on behalf of the defendant that the letter dated the 13th July, 1943 constitutes a demand. In the case of *Khoo Soo Jin & Anor. v. Lye Yew Song*[1], Taylor, J., stated :—

"In short, the demand may be oral or written, formal or informal, express or implied, but it must be communicated to the debtor. Where the demand was not explicit the question must be:— What was the effect on the mind of the debtor? If in the circumstances he reasonably thought that he was called upon to pay a legal debt, the step taken would amount to an implied demand."

In the same case, Spenser Wilkinson, J., stated :—

"It was argued for the appellants that in this section the word 'demand' covers only an express demand and that sub-section (3) deliberately extends the meaning to one form of implied demand only and no further. I doubt whether the meaning of the section can be so limited. I think any action or conduct which clearly and unequivocally acts upon the mind of the debtor as a demand would be covered by the wording of the section."

In the present case I am satisfied that the defendant and his wife reasonably thought from the letter of the 13th July, 1943, that the defendant was being called upon to repay the principal.

I think it is immaterial whether or no the treasurers had any authority to demand repayment of a loan without instructions from the committee and that it is immaterial whether or no the writer of the letter of the 13th July, 1943 intended to call for repayment of the loan if the language used by him was reasonably thought by the defendant to be a claim for repayment.

The second question which I have been asked to decide is whether or no the repayment of the principal sum by the defendant on the 22nd April, 1944 was made within three months of the demand. Quite clearly it was not. The only other letter of demand sent by the Society's treasurers was that of the 30th March, 1944 which related only to interest on the loan.

The third question I am asked to decide is whether or no there was an extension of time mutually agreed between the parties and whether or no repayment of the said principal sum was made within such extended period. In *Chua Yam Quee v. Peena Moona Mohamed Abdul Hameed & Anor.*[2], Murray-Aynsley, C.J., stated :—

"I do not consider that the words 'mutually agreed' necessarily import an express agreement. As in the formation of contract, agreement can be inferred from conduct."

And Evans, J., in discussing the meaning of the word "mutually" stated :—

"I think here it is intended to mean a clear consent on both sides, and is intended to exclude all such matters as acquiescence and implied consent. The best evidence of these is acceptance of payment...."

Thorogood, J., however, stated :—

"There is no direct evidence of such mutual agreement. Counsel for the respondents agreed with the appellant's contention that the latter was bound to accept payment when offered. The appellant being so bound there is nothing to justify the finding that mere acceptance after the date fixed by appellant for payment implied mutual agreement to extend the time so fixed."

These opinions appear to me to be somewhat conflicting. I have held that the letter of 13th July, 1943 was a demand for the repayment of the principal. In that letter no date was ever fixed or suggested as to when the payment should be made. The defendant in reply to that letter said that at the time he was unable to pay anything towards the loan. The defendant received no reply to his letter. In these circumstances and in view of the fact that no further demand for the payment of the principal was ever made I am of opinion that the Society's agent must be taken to have agreed that defendant should have an indefinite period to repay the loan and in accordance with the words of Murray-Aynsley, C.J., an agreement to that effect can be inferred. I answer both parts of the third question in the affirmative. I give judgment for the defendant with costs.

Judgment for the defendant.